REMARKS

Claims 1, 8-11, 13-18, 20-23, and 28-36 are pending, of which claims 1 and 29 are independent. Claims 30-36 have been added.

Claim 18 was withdrawn in response to a restriction requirement, but in order to retain the right to rejoinder, Applicant amended claim 18 to depend from claim 1, thus requiring all the limitations of the elected invention (as directed by MPEP § 821.04).

Substance of Interview

Applicant's representative Elliott Mason (Reg. No. 56,569) thanks the Examiner for the telephone interview on March 23, 2009. In accordance with MPEP Section 713.04, the substance of the interview is included herein. No exhibits were shown. Applicant's representative asked for a more detailed explanation of the Examiner's Response to Arguments section of the Office Action, which the Examiner provided (as described in more detail below). No agreement was reached with respect to the prior art rejections.

Prior Art Rejections

Claims 1, 8-11, 13-17, and 20-23, and 28-29 stand rejected as follows. Claims 1, 9-11, 15-17, 21, 22, and 29 stand rejected under 35 U.S.C. 102(b) as anticipated by Kern (U.S. 4,601,545). Claims 8, 13, 14, 23, and 28 stand rejected under 35 U.S.C. 103(a) as unpatentable over Kern in view of Rizzo (U.S. 5,800,530). Claim 20 stands rejected under 35 U.S.C. 103(a) as unpatentable over Kern in view of Sandsted (U.S. 6,749,632).

Claims 1 and 29

Applicant submits that Kern neither discloses nor suggests at least that "the wavefront data is configured according to a selected high-order aberration correction to modify the characteristic function of the optical element to reduce high-order aberration in the eye," as recited by claims 1 and 29.

In the pending Office Action, as in the previous Office Actions, the Examiner is interpreting the RAM or ROM in the CPU 54 as the recited "memory element," and the "instructions regarding distribution of voltage levels" as the recited "wavefront data." The Examiner refers to col. 5, lines 45-47 as disclosing an "aspheric lens effect … which reduce high order, or spherical, aberration."

The Examiner is interpreting the phrase "the wavefront data is configured according to a selected high-order aberration correction" as reading on the instructions stored in the memory of Kern because the electrodes of Kern correct a selected high-order aberration. It appears that the Examiner is making an argument that Kern inherently discloses that the instructions stored in the memory are configured according to a selected high-order aberration correction, as Kern does not explicitly disclose that the instructions stored in the memory are configured according to any aberration correction, much less, a "selected high-order aberration correction."

In reply to the previous Office Action, Applicant argued:

> **In Kern, not only are there other possibilities for configuring the instructions in the memory besides "according to a selected high-order aberration correction," as the claim requires, but Kern specifically describes that it is the electrode arrangements that achieve effects such as the "aspheric lens effect" which provide the aberration correction.**

In the Response to Arguments section of the current Office Action, the Examiner replied:

> **Examiner maintains that the instructions/memory element encompass the claimed memory element having wavefront data. Applicant acknowledges the instructions/memory in Kern correct high order aberration, but appears to suggest the instructions do not meet the limitations because Kern's electrode arrangement provides the high order aberration correction (rather than the instructions). This is not persuasive because the instructions control the electrode arrangement.**

First, Applicant did not acknowledge that "the instructions/memory in Kern correct high order aberration." On the contrary, in the previous reply Applicant argued that "Kern does not explicitly disclose that the instructions stored in the memory are configured according to any aberration correction," and that "Kern specifically describes that it is the electrode arrangements that achieve effects such as the 'aspheric lens effect' which provide the aberration correction."

Second, the Examiner's statement that "the instructions control the electrode arrangement" is clearly not true since it is not possible for Kern's instructions to control the electrode arrangement. During the interview, the Examiner clarified that he meant to argue that the instructions control the arrangement of electrodes that are activated. However, there is

nothing in Kern that suggests using the instructions to activate some electrodes and deactivate other electrodes to control an arrangement of activated electrodes such that the instructions are "configured according to a selected high-order aberration correction." On the contrary, Kern describes that the "electrodes may be alternately powered concentric electrodes 90 on a single substrate for creating a cylindrical lens effect." There would be no reason (other than hindsight derived from Applicant's own specification) to depart from Kern's teaching about alternately powering the electrodes to instead enable the instructions to control the arrangement of electrodes that are activated.

Dependent claim 23 and 28

These claims depend from claim 1, and are allowable for at least the same reasons as claim 1.

Additionally, amended claim 23 requires that "the high-order aberration correction provided by the wavefront data depends on an estimate of a distance to an object-of-regard," and amended claim 28 requires that "the controller is configured to use the wavefront data to cause the actuator to provide different signals for high-order aberration correction for different estimates provided by the range-finder."

The Examiner addresses the previously pending claims 23 and 38 together by saying that the rangefinder of Rizzo would have been combined with Kern's system "in order to provide accurate distance estimates to determine proper accommodation levels." However, the use of an estimate of a distance to an object-of-required for accommodation does not suggest that "the high-order aberration correction provided by the wavefront data depends on an estimate of a distance to an object-of-regard," or that "the controller is configured to use the wavefront data to cause the actuator to provide different signals for high-order aberration correction for different estimates provided by the range-finder."

Remaining dependent claims

The remaining claims are all properly dependent on claim 1, and are thus allowable therewith. The dependent claims add one or more further limitations, which are not presently

relied upon to establish patentability. For that reason, and not because Applicant agrees with the Examiner, no rebuttal is offered to the Examiner's reasons for rejecting the dependent claims.

New claims 30-36

New claims 30-32 depend on claim 1, and are allowable for at least the same reasons as claim 1. Claim 33 recites that "the wavefront data is configured according to a selected high-order aberration correction to modify the characteristic function of the optical element, thereby reducing high-order aberration in the eye" and is allowable for at least the same reasons as claim 1. Claims 34-36 depend on claim 33, and are allowable for at least the same reasons as claim 33.

The required fees in the amount of $292 for excess claim fees, $65 for the Petition for Extension of Time are being, and $405 for the Request for Continued Examination are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account Authorization. Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket No.: 00633-0041001.

Respectfully submitted,

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